



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2004

Ms. Jennifer S. Kaufman
Assistant General Counsel
Texas State Board of Medical Examiners
P.O. Box 2018
Austin, Texas 78768-2018

OR2004-6382

Dear Ms. Kaufman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206122.

The Texas State Board of Medical Examiners (the "board") received a request for documents relating to the investigation of a named physician. You state that you have released some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered correspondence submitted by the requestor. *See* Gov't Code § 552.304 (providing that individual may submit comments as to why information should or should not be released).

You claim that the submitted investigative records are excepted under section 552.101 of the Government Code in conjunction with section 164.007(c) of the Occupations Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that another statute makes confidential. Section 164.007(c) provides the following:

(c) Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is

privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Occ. Code § 164.007(c). Section 164.007(c) applies to investigatory records gathered by the board during an investigation of a license holder. Based upon our review of your arguments and the submitted information, we find that the submitted records constitute investigative information possessed by the board relating to a license holder. Accordingly, you must withhold this information under section 552.101 in conjunction with section 164.007(c) of the Occupations Code.¹

The requestor asserts that she has a special right of access to this information under section 552.023 of the Government Code. This section provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a). Thus, information that relates to a person may not be withheld from that person, or his or her authorized representative, on the basis of that person’s right to privacy. *See also* Gov’t Code § 552.023(b); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning himself). A requestor does not have a right of access under section 552.023, however, if the requested information is protected from public disclosure by a law that is not based exclusively on the requestor’s own privacy interests. *See* Gov’t Code § 552.023(b) (governmental body may assert as grounds for denial of access to information other provisions of Public Information Act (“Act”) or other law not intended to protect person’s privacy interests); *see also* Open Records Decision Nos. 603 at 2-3 (1992) (no section 552.023 right of access to information encompassed by Health & Safety Code § 142.009, which protects integrity of investigatory process as well as individuals’ privacy interests), 591 at 4-5 (1991) (no section 552.023 access to information protected by peer review statutes, purpose of which is encouragement of frank discussion and evaluation), 587 at 3-4 (1990) (no right of access to information protected by former Fam. Code § 34.08, which protected law enforcement interests). Because section 164.007 of the Occupations Code is not based solely on an individual’s privacy interests, the requestor does not have a right of access to information made confidential by section 164.007.

¹As our ruling is dispositive, we do not reach your argument under section 160.006 of the Occupations Code.

Finally, the board asks this office to issue a previous determination allowing the board to withhold complaint information. We decline to issue such a previous determination at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a long horizontal flourish extending to the right.

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/sdk

Ref: ID# 206122

Enc. Submitted documents

c: Ms. Alma Padilla
8310 Mettler Drive
El Paso, Texas 79925
(w/o enclosures)